

1 THE HONORABLE RICARDO S. MARTINEZ

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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 BRITTANY EASTON, an individual,

12 Plaintiff,

13 vs.

14 ASPLUNDH TREE EXPERTS, CO.,

15 Defendant.

Case No. 2:16-cv-01694-RSM

16
17 **PRETRIAL ORDER**

18 **I. FEDERAL JURISDICTION**

19 Pursuant to 28 U.S.C. § 1332, this Court has diversity jurisdiction because the Plaintiff
20 does not share a state of citizenship with the Defendant. The alleged amount in controversy
21 exceeds \$75,000.

22 **II. CLAIMS AND DEFENSES**

23 Plaintiff Brittany Easton ("Plaintiff") will pursue claims at trial against Defendant
24 Asplundh Tree Experts, Co. ("Asplundh" or "Defendant") for sex discrimination, hostile work
25 environment, negligent hiring, and negligent supervision in violation of Washington's Law
26 Against Discrimination, RCW 49.60, *et seq.*

1 Defendant intends to argue that Plaintiff cannot satisfy each essential element of her
2 claims and that Plaintiff has not suffered any damage as a result of Defendant's alleged conduct.

3 Defendant intends to pursue the following defenses:
4

- 5 • Mr. Mell was not an owner, manager, partner, or corporate officer of Defendant as
6 defined by the WLAD.
- 7 • Defendant did not know of the alleged harassment and Defendant should not have
8 known of the alleged harassment because it was not pervasive.
- 9 • Defendant took reasonably prompt and adequate corrective action reasonably designed
10 to end the alleged harassment.

11 **III. STATEMENT OF ADMITTED FACTS**

12 The following facts are admitted by the parties:

- 13 1. Plaintiff, who is female, is 29 years old. She resides in Washington State.
- 14 2. Defendant is a corporation headquartered in Pennsylvania that does business in
15 Washington State.
- 16 3. Defendant is a company that specializes in tree pruning vegetation and
17 management for utilities and government agencies.
- 18 4. The Grays Harbor Public Utilities District (the "PUD") entered into a "time and
19 materials" contract ("Contract") with Defendant for Vegetation Management Services and
20 Emergency Storm Response (the "Project").
- 21 5. Defendant employed Plaintiff as a flagger as of September 22, 2014.
- 22 6. Robert Fly was the Project General Foreman and Plaintiff's and Joseph Mell's
23 supervisor.
- 24 7. Following the conclusion of Defendant's investigation in early September 2015,
25 Defendant decided that there needed to be disciplinary action.
26

8. On September 25, 2015, Asplundh disciplined Mr. Mell with an unpaid week's suspension and re-training on Asplundh's no harassment policy.

9. Mr. Fly was also disciplined with a written notice on September 25, 2016.

10. After the investigation and upon Plaintiffs rehire, Plaintiff was put on a different crew and Mr. Mell was restricted from interacting with her.

IV. ISSUES OF LAW

The following issues of law are to be determined by the Court:

1. What amount of the costs of this action, including but not limited to attorney's fees, should be awarded to Plaintiff?

2. Plaintiff will not be submitting any special damages for consideration by the jury; only general damages.

There may be issues of law for the Court's determination in connection with jury instructions and motions *in limine*.

V. EXPERT WITNESSES

(a) Each party shall be limited to one expert witness on the issue of Plaintiff's mental health condition.

(b) The names and addresses of the expert witnesses to be used by each party at the trial and the issue upon which each will testify is:

(1) On behalf of Plaintiff

Randall Beaton (will testify), 2910 East Madison St., Ste. 212 Seattle, WA 98112. (206) 322-8353. Dr. Beaton will testify to everything included in his report and any matter referred to in Plaintiff's Complaint, including but not limited to: Plaintiff's damages, treatment, pre-existing conditions, and emotional distress. Dr. Beaton will discuss the causation of Plaintiff's damages

1 and whether any preexisting mental health condition was aggravated or exacerbated by the
2 harassment.

3 **(2) On behalf of Defendant**

4 **Dr. Russell Vandenberg** (will testify), 11201 SE 8th St #105, Bellevue, WA 98004. Dr.
5 Vandenberg will testify to everything included in his report and any matter referred to in
6 Plaintiff's Complaint, including but not limited to: Plaintiff's mental health condition, including
7 her anxiety disorder, to assess the presence of any mental health condition causally related to
8 alleged sexual harassment in the workplace, whether any preexisting mental health was
9 aggravated or exacerbated by the alleged harassment.
10

11 **VI. OTHER WITNESSES**

12 The names and addresses of witnesses, other than the experts, to be used by each party
13 at the time of trial and the general nature of the testimony of each are:
14

15 **(a) On behalf of Plaintiff**

16 Plaintiff reserves the right to call any of the witnesses identified by Defendant.

17 1. **Brittany Easton** (will testify), c/o Washington Injury Lawyers, PLLC. Ms. Easton will
18 testify regarding the circumstances surrounding her employment; Defendant's discrimination,
19 hostile work environment, and negligence; complaints regarding discrimination, hostile work
20 environment, and negligence; Defendant's investigation; and the damages she suffered as a
21 result of Defendant's conduct.
22

23 2. **Shawn Shapiro** (will testify), c/o Floyd, Pflueger & Ringer, P.S. Mr. Shapiro will
24 testify regarding any matter referred to in Plaintiff's Complaint, including but not limited to:
25 Defendant's policies and practices; Defendant's discriminatory acts and negligence; complaints
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1 regarding discrimination and hostile work environment; Defendant's investigation; and
2 Plaintiff's job performance.

3 3. **Robert Fly** (possible witness), 19402 Goebel Rd. SE. Mr. Fly may be called to testify
4 regarding any matter referred to in Plaintiff's Complaint, including but not limited to:
5 Defendant's policies and practices; Defendant's discriminatory acts and negligence; complaints
6 regarding discrimination and hostile work environment; and Defendant's investigation.
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8 4. **Joe Mell, Sr.** (possible witness), c/o Floyd, Pflueger & Ringer, P.S. Mr. Mell may be
9 called to testify regarding any matter referred to in Plaintiff's Complaint, including but not
10 limited to: Defendant's policies and practices; Defendant's discriminatory acts and negligence;
11 complaints regarding discrimination and hostile work environment; and Defendant's
12 investigation.
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14 5. **Terry Lonborg** (possible witness), 12619 Champion Drive Southwest Olympia, WA
15 98512-9060; (360) 480-1050. Mr. Lonborg may be called to testify regarding any matter
16 referred to in Plaintiff's Complaint, including but not limited to: Defendant's policies and
17 practices; Defendant's discriminatory acts and negligence; complaints regarding discrimination
18 and hostile work environment; and Defendant's investigation.
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20 6. **Tina Blackburn** (possible witness), (360) 660-0075. Ms. Blackburn may be called to
21 testify regarding any matter referred to in Plaintiff's Complaint, including but not limited to:
22 Plaintiff's damages, complaints regarding discrimination and hostile work environment,
23 emotional distress, and condition before and after her employment with Defendant.

24 7. **Tim Doll** (possible witness), (360) 593-3919. Mr. Doll may be called to testify
25 regarding any matter referred to in Plaintiff's Complaint, including but not limited to: Plaintiff's
26 damages, complaints regarding discrimination and hostile work environment, union operations,

1 Defendant's reputation, Plaintiff's emotional distress, and Plaintiff's condition before and after
2 her employment with Defendant.

3 8. **Kelly Peterson-Lalka** (possible witness), (360) 470-4603. Ms. Peterson-Lalka may be
4 called to testify regarding any matter referred to in Plaintiff's Complaint, including but not
5 limited to: Plaintiff's damages, complaints regarding discrimination and hostile work
6 environment, emotional distress, and condition before and after her employment with
7 Defendant.
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9 9. **Chad Sweitzer** (will testify), (360) 968-9633. Mr. Sweitzer may be called to testify
10 regarding any matter referred to in Plaintiff's Complaint, including but not limited to:
11 Defendant's policies and practices; Defendant's discriminatory acts and negligence; complaints
12 regarding discrimination and hostile work environment; Defendant's investigation; and
13 Plaintiff's job performance.
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15 10. **Dario Vargas** (possible witness). Mr. Vargas may be called to testify regarding any
16 matter referred to in Plaintiff's Complaint, including but not limited to: Defendant's policies
17 and practices; Defendant's discriminatory acts and negligence; complaints regarding
18 discrimination and hostile work environment; Defendant's investigation; and Plaintiff's job
19 performance.
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21 11. **Sally Heath** (will testify), 2629 Parkmont Lane SW, Ste. 101 Olympia, WA 98502-
22 5782. Ms. Heath may be called to testify regarding any matter referred to in Plaintiff's
23 Complaint, including but not limited to: Plaintiff's damages, treatment, pre-existing conditions,
24 and emotional distress.

25 **(b) On behalf of Defendant**

26 Defendant reserves the right to call any of the witnesses identified by Plaintiff.

1 1. **Brittany Easton** (will testify), c/o Washington Injury Lawyers, PLLC. Ms. Easton will
2 testify as to the circumstances surrounding her alleged harassment while employed with
3 Asplundh.

4 2. **Shawn Shapiro** (will testify), c/o Floyd, Pflueger & Ringer, P.S. Mr. Shapiro was a
5 Regional Manager with Asplundh. He will testify as to Asplundh's sexual harassment and
6 progressive disciplinary policy; that flaggers were to report incidents of sexual harassment,
7 discrimination and retaliation to the project General Foreman; the timeline for when Asplundh
8 learned about Plaintiff's alleged sexual and work place harassment; and the steps that were
9 taken to investigate and later discipline Mr. Mell and Mr. Fly.

10 3. **Robert Fly** (will testify), c/o Floyd, Pflueger & Ringer, P.S. Mr. Fly was Plaintiff's
11 supervisor and a General Foreman for Defendant on the Project with the PUD, where the PUD
12 scheduled Defendant's work under the Contract at the PUD's sole discretion.
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15 Mr. Fly will testify about his knowledge of and Plaintiff's communications regarding
16 Mr. Mell's alleged sexual and work place harassment conduct, including when Plaintiff
17 requested he not report Mr. Mell. He will further testify that his manager was Shawn Shapiro,
18 and about the circumstances surrounding his report of Mr. Mell's alleged conduct to Mr.
19 Shapiro.

20
21 Mr. Fly will also testify as to the instruction he received in August 2015 and at various
22 times thereafter from his Superintendent at the PUD, Jeff McClain, that Defendant only perform
23 work that did not require flaggers to reduce costs being incurred by the PUD. Mr. Fly will
24 further testify that he laid off Plaintiff and the other flagger employed by Defendant as a result
25 of this direction from Mr. McClain. Mr. Fly will not testify regarding any alleged retaliation
26 against Plaintiff in light of the Court's order granting Asplundh's partial motion for summary

1 judgment on November 15, 2017, precluding Plaintiff from pursuing a claim for retaliatory
2 discharge and from presenting any evidence of wage loss damages, Dkt #43.

3 4. **Joseph Eric Mell, Sr.** (may testify), c/o Floyd, Pflueger & Ringer, P.S. Mr. Mell was
4 a Foreman with Asplundh and the alleged perpetrator of all of the alleged sexual and work place
5 harassment as per Plaintiff's Complaint. Mr. Mell is a possible witness only. In the event that
6 Mr. Mell testifies, he will testify as to his alleged conduct toward Plaintiff and the disciplinary
7 actions taken by Asplundh following the investigation.

9 5. **Rick Pitt** (may testify), c/o Floyd, Pflueger & Ringer, P.S. Mr. Pitt is a possible witness.
10 In the event that Mr. Pitt testifies, he will testify as to his notification in his capacity as General
11 Counsel at the PUD to Defendant regarding Mr. Mell's alleged harassment of Plaintiff. Mr.
12 Pitt will not testify regarding any alleged retaliation against Plaintiff, in light of the Court's
13 order granting Asplundh's partial motion for summary judgment on November 15, 2017,
14 precluding Plaintiff from pursuing a claim for retaliatory discharge and from presenting any
15 evidence of wage loss damages, Dkt #43.

17 6. **Jeff McClain** (may testify), c/o Floyd, Pflueger & Ringer, P.S. Mr. McClain is a
18 possible witness. In the event that Mr. McClain testifies, he will testify regarding his instruction
19 in his capacity as the Construction Contract Superintendent for the PUD to Mr. Fly that
20 Asplundh only conduct work that did not require flaggers in or about August 2015. Mr.
21 McClain will not testify regarding any alleged retaliation against Plaintiff, in light of the Court's
22 order granting Asplundh's partial motion for summary judgment on November 15, 2017,
23 precluding Plaintiff from pursuing a claim for retaliatory discharge and from presenting any
24 evidence of wage loss damages, Dkt #43.
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VII. TRIAL EXHIBITS

(a) Authenticity stipulated and admissibility disputed, subject to relevancy and any other objections:

Plaintiff's exhibits

Exhibit Number	Description
3	Asplundh Employee Handbook
4	Joe Mell, Sr. Personnel File
5	Rob Fly Personnel File
6	Terry Lonborg Personnel File
7	Brittany Easton Personnel File
8	Rob Fly Deposition Video
9	Shawn Shapiro Deposition Video
10	Brittany Easton Deposition Video
11	Joe Mell, Sr. Deposition Video
12	Written Discovery & Responses
15	EEOC Notice to Asplundh Tree Experts, Co. of Charge of Discrimination dated April 21, 2016

Defendant's exhibits

Exhibit #	Date	Description
A-1	5/2013	Asplundh Employee Handbook
A-2	4/25/2014	Asplundh's Disciplinary Program Policy
A-3	2006	Asplundh's Background Investigation Policy
A-4	5/2015	Asplundh Region 072 Policy Manual
A-5	effective 1/1/2013 - 1/2/2016	Local Union No. 77 International Brotherhood of Electrical Workers Collective Bargaining Agreement
A-6	1/23/14	Grays Harbor PUD 2014 Vegetation Management Services Contract
A-7	6/7/2016	Asplundh Tree Expert Co. Officers and Directors
A-8	9/22/2014	Easton Hire Packet
A-9	9/22/2014 - present	Excerpts from Brittany Easton's Personnel File
A-10	7/16/2001 - 9/25/2016	Excerpts from Robert Fly's Personnel File

A-11	June 1995 – February 2016	Excerpts from Joseph Mell's Personnel File
A-12	8/25/15	Email from Rick Pitt to Shawn Shapiro regarding alleged harassment of Asplundh female employee on PUD worksite.
A-13	8/26/15	Email from Shawn Shapiro to Rick Pitt regarding Shawn Shapiro's lack of awareness of any reported harassment and requesting further information, as produced by Plaintiff from the PUD's public records.
A-14	Spanning 2/4/2012 - 6/13/2016	Excerpts from Brittany Easton's medical records from Heath & Associates
A-15	Spanning 3/12/2001 - 6/15/17	Excerpts from Brittany Easton's medical records from James, Sanderson & Lowers

(b) Authenticity and admissibility disputed:

Plaintiff's exhibits

Exhibit Number	Description
1	Timeline of Mr. Mell's violations of Asplundh safety rules
2	Timeline of events
13	Photos of Ms. Easton, Family, and friends
14	Rules Board
16	Brittany Easton Charge of Discrimination

VIII. ACTION BY THE COURT

(a) This case is scheduled for trial before a jury on March 19, 2018, at 9 a.m.

(b) Trial briefs shall be submitted to the court on or before March 14, 2018.

(c) Jury instructions requested by either party shall be submitted to the court on or before March 14, 2018. Suggested questions of either party to be asked of the jury by the court on voir dire shall be submitted to the court on or before March 14, 2018.

This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

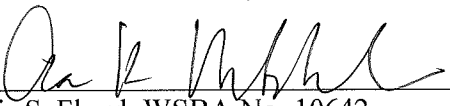
1 Dated this 7th day of March, 2018.

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3 HON. RICARDO S. MARTINEZ

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6 WASHINGTON INJURY LAWYERS, PLLC

7
8 By: 
9 Jenna M. Labourr, WSBA #44555
10 Young-Ji Ham, WSBA #46421
11 Washington Injury Lawyers, PLLC
12 2211 Elliott Avenue, Suite 200
13 Seattle, WA 98121
14 Phone: (425) 312-3057
15 Fax: (206) 866-0208
16 Email: jenna@washinjurylaw.com
17 Email: youngji@washinjurylaw.com
18 Attorneys for Plaintiff Brittany Easton

19 FLOYD PFLUEGER & RINGER, P.S.

20
21 By: 
22 Francis S. Floyd, WSBA No. 10642
23 ffloyd@floyd-ringer.com
24 Anna K. Mitchell, WSBA No. 50871
25 amitchell@floyd-ringer.com
26 200 W. Thomas Street, Suite 500
Seattle, WA 98119-4296
Tel (206) 441-4455
Fax (206) 441-8484
Attorneys for Defendant Asplundh Tree Experts, Co.

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CERTIFICATE OF SERVICE

I certify that on March 7, 2018, I served the foregoing upon counsel of record, at the address and via the methods stated below:

Francis S. Floyd, WSBA #10642
Anna K. Mitchell, WSBA #50871
Floyd, Pflueger & Ringer, P.S.
200 W Thomas Street, Suite 500
Seattle, WA 98119-4296
Telephone: (206) 441-4455
Fax: (206) 441-8484
Email: ffloyd@floyd-ringer.com
Email: amitchell@floyd-ringer.com

_____ Hand-Delivered Via Legal
Messenger
_____ Via U.S. Mail, 1st Class, Postage
Prepaid
_____ Via Overnight Delivery
_____ Via Email per agreement
 X Via ECF Filing

Attorneys for Defendants



Jenna M. Labourr